# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 21.

T. H. RHODES, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JULY 25, 1894.

(15,648.)

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No. 146.

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*vs.*

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 23, 1896.

a Pleas before the supreme court of Iowa in a cause therein tried and determined, wherein The State of Iowa was plaintiff and appellee and T. H. Rhodes, defendant, appellant.

Be it remembered that on the 17th day of January, 1893, there was filed in the supreme court of Iowa a printed abstract of the record, the same being in the words and figures following, to wit:

1 In the Supreme Court of Iowa, January Term, 1893.

THE STATE OF IOWA, Appellee,
*vs.*
T. H. RHODES, Appellant.

Appeal from the judgment of the Washington district court.

At law.

D. Ryan, judge.
H. M. Eicher, for the appellant.
C. J. Wilson, for the appellee.

*Appellant's Abstract.*

On the 26th day of August, 1891, the appellee filed in the office of E. W. Swisher, a justice of the peace in and for Washington county, Iowa, an information charging the defendant, T. H. Rhodes, with unlawful transportation of intoxicating liquors conveyed from Burlington, Iowa, to Brighton, Iowa.

2 On the trial and hearing of the charge made in said information, before said justice, the defendant was convicted of the crime as charged, and adjudged to pay a fine of the sum of one hundred dollars ($100) and the costs of the proceeding.

The appellant appealed from the verdict and judgment of said justice to the district court of Washington county, Iowa.

On the 6th day of October, 1891, this cause came on for trial in the said district court before D. Ryan, sole judge (a jury being waived), and the appellee offered in evidence the following

*Agreed Statement of Facts.*

It is agreed by the parties to this action that the facts herein stated shall be used as testimony in the trial of this proceeding and the same shall be subject to objection for materiality and relevancy.

The Chicago, Burlington and Quincy Railway Company, herein designated as the C., B. & Q., is a common carrier incorporated under the law of Illinois and is located in the State of Illinois and Iowa and many other States, and runs a continuous line of its railway from Dallas, Illinois, to Burlington, Iowa, and beyond said points.

The Burlington and Western Railway Company, herein designated as the B. & W., is a common carrier incorporated under the

law of Iowa, and located and doing business wholly within
3 Iowa, running a continuous line of its railway from Burlington, Iowa, to Oskaloosa, Iowa, with intervening stations, one being at Brighton, in Washington county, Iowa, and a depot is there maintained by said carrier.

Both the aforesaid carriers have a station at Burlington, Iowa, where they, as such, jointly use the same depot in their business and the said C., B. & Q. has a station and depot at Dallas, Illinois.

The said carriers have between themselves "joint freight tariffs" and do through billing with each other by transporting under a single waybill from any station on either of the lines to any station on the line of the other as demanded, any legitimate articles for transportation, and divide compensation for the same on the percentage basis.

The defendant is the station agent, and in the employ of the said B. & W. at Brighton, Iowa, and there transacts the business for said B. & W. as such common carrier.

The Dallas Transportation Company and the members and individuals composing the same are non-residents of the State of Iowa and are all residents of and located within the State of Illinois.

All matters and facts hereinbefore stated have been in existence continuously during the whole of the year 1891 and for some time prior thereto.

On the 4th day of August, 1891, said Dallas Transportation Company delivered to said C., B. & Q. at Dallas, Illinois, an article of merchandise consisting of one wooden box, about one foot cube in size, marked "W. H., Brighton, Iowa," and demanded of the said
C., B. & Q. the shipment of the said box from Dallas, Illinois,
4 to Brighton, Iowa, and directed that at Brighton the box be delivered to one William Hown, who was the consignee in the shipment and was then a resident of Jefferson county, Iowa. And the said Dallas Transportation Company at the time and place of such delivery for shipment, represented to and informed the station agent of the said C., B. & Q. at Dallas, Illinois, receiving said box for transportation, that the contents thereof were groceries. It was customary for said transportation company to ship intoxicating liquors and the said C., B. & Q. agent knew of the said custom at the time.

Said C., B. & Q. received said box as groceries from said transportation company at Dallas, Illinois, on the 4th day August, 1891, for shipment from Dallas, Illinois, to Brighton, Iowa, in the capacity of common carrier and on the same day started the shipment on the said transportation from Dallas, Illinois, over the line of said C., B. & Q. consigned and billed through from the said starting point to Brighton, under a single freight contract, a copy of which is hereto attached, marked "Exhibit A" and shall have the same force and effect as the original.

In due course of time, about August 5th, 1891, said shipment arrived, over the C., B. & Q., at Burlington, Iowa, and was there by said C., B. & Q. delivered to said B. & W. for transportation to Brighton, Iowa. Said B. & W. as common carrier transported

said box to its destination under said original consignment and it was delivered at Brighton, Iowa, on the platform on the outside of the B. & W. depot by the trainmen of the said B. & W.,
5 August 5th, 1891, about 3 p. m.

Immediately after the delivery of said box on the platform, this defendant, complying with the directions of his employer, opened the door of the depot building leading from the said platform and transferred said box and other freight on the inside of said building, which inside is commonly known as the freight-room. The moving of said box by this defendant did not exceed six feet, and after said moving the defendant at once reclosed the door and returned to his own business room in another portion of the said building. This defendant had no physical connection with the transportation of said box except its removal from the platform to the freight-room as herein stated, and any act done by the defendant pertaining to the said box or any possession held by him of the same was in the capacity of agent for the said B. & W. in said transportation. Said box was never delivered by this defendant or any other person to the consignee, but remained in the possession of the B. & W. until taken from it as hereinafter stated.

About 4 o'clock p. m of August 5, 1891, said box was seized by W. H. Snyder, a constable in and for Washington county, under a search warrant issued by E. W. Swisher, a justice of the peace in and for Washington county, Iowa, on an information filed before him charging that intoxicating liquors improperly marked were in the said building. Said search warrant directed said constable to search said building for intoxicating liquors and seize the same. After due notice of the seizure of the liquors and the trial thereof
6 and no one appearing to claim or defend said article seized, the same was put on trial and by the said justice as a court condemned as intoxicating and ordered destroyed and the order was executed.

The compensation amounting to thirty-five cents, due said C., B. & Q. and B. & W. for the said transportation under said consignment, was due and unpaid at the time of said seizure and the said box was at the time of seizure, held by this defendant for the payment of said charges, and for delivery to the consignee upon payment of the same.

The contents of the said shipment was a jug containing whisky completely enclosed and hidden by such box and said whisky was intoxicating, but the character and circumstance of said shipment and the contents of said box were unknown to the said C., B. & Q. and B. & W. unless the knowledge thereof, if any, that was in possession of the defendant, Rhodes, or said agent at Dallas, Illinois, could be imputed to them. The knowledge of the defendant of the character and circumstance of the said shipment or of the contents of said box is not stated herein and either party to this action may introduce oral testimony on the trial of this cause to show such knowledge or the want of it.

Marking articles of merchandise with the initials of the con-

signee is a common way among common carriers of marking any legitimate articles delivered to them for transportation.

Said shipment was consigned and transported by the said carriers from Dallas, Illinois, to Brighton, Iowa, under a "through waybill." A true and complete copy of the said waybill is
7 hereto attached, marked "Exhibit B," and made a part hereof and conceded the same force and effect as the original. The purpose of a waybill is to describe the articles transported and to accompany the shipment by passing from conductor to conductor and agent to agent and thus aid the employees of such carriers to keep track of the shipments.

The marks hereinbefore referred to, namely, "W. H., Brighton, Iowa," were the only marks of any kind that were on the said box or any part of said shipment during the whole of said transportation and the same was not marked as provided by section 2412, McClain's Code 1888.

Neither this defendant nor the said B. & W. held the proper permit from the authorities of Washington county, Iowa, for the transportation or sale of intoxicating liquors and neither of them were furnished with a certificate from the county auditor of said county certifying that the consignee, William Hown, was authorized to sell intoxicating liquors in the said Washington county, Iowa, as provided for by section- 2367 and 2371 of said McClain's Code.

There was nothing in the appearance of said box indicating what were the contents thereof and it remained unchanged during the entire transportation.

Eithe- party may offer other evidence in the trial of this cause.

Signed by attorneys of parties.

EXHIBIT "A."

DALLAS CITY, ILLINOIS, 8, 4, 1891.

8 Received of the Dallas Transportation Company at the depot of the C., B. & Q. railroad, the following articles in good order to be delivered in like good order to William Hown.

Marks: W. H., Brighton, Iowa.

Articles: One box groceries. 40. Owner's risk.

EXHIBIT "B."

Chicago, Burlington and Quincy Railroad Company.

Dallas, Ill., to Brighton, Ia., via Burl. and B. & W. R'y.

Date, Aug. 5, 1891.

Consignor and original point of shipment: Dallas T. Co.

Consignee and destination: William Hown. W. H., Brighton, Iowa.

Description of freight: One box groceries. O. R.

Weight and class: First. 40.

Local or line charges: 25.

State rests.

The defendant offered the following evidence:

T. H. RHODES testifies:

I am the defendant and for two years and eight months have been the station agent for the Burlington and Western railway at Brighton, Iowa, and was in that business during the month of August, 1891. About August 5, 1891, I received by freight a box marked "W. H., Brighton, Iowa," and this was afterwards seized by W. H. Snyder, constable, and was condemned. A through
9 waybill accompanied the shipment and Exhibit "B" attached to the agreed statement of facts is a true copy of the same. No other papers came with the shipment. The charges due for transportation of the box were twenty-five cents.

State objects to last sentence because immaterial and irrelevant. Overruled and State excepts.

Previous to the arrival of the box, Mr. Fleak, mail-carrier, told me he was looking for a box from Dallas city and called for a box for William Hown. I told him I had received no box of that description and I think he came back a second time and asked if I had received a box for William Hown and said it was likely to be marked "W. H.," and would contain alcohol or whisky and I told him I had received nothing of that description and he went away, but on the next day I received it. Mr. Fleak said he expected it on most any train and that Mr. Hown had told him to get it for him, but I told him I could not deliver it to him without a written order from Hown and he said he would get one. I do not remember whether he said anything more or not. He told me what it would likely contain and how it would be likely marked. When I got this package and examined the waybill I supposed from what Mr. Fleak told me that perhaps this was the box that he told me would come. From the waybill I got the information that it was a box of groceries.

Q. What did you suppose it was?

Objected to by the plaintiff because irrelevant and immaterial. Sustained and defendant excepts.

10 All the knowledge I had pertaining to the contents of the box was what I acquired from the waybill, "Exhibit B," and the conversation with Mr. Fleak.

Cross-examination:

Mr. Fleak told me the box would come from Dallas, Illinois. I think prior to that time I had received shipments over the road called whisky, but I don't remember, but not at this time.

Testimony closed.

At the conclusion of the taking of the aforesaid testimony it was agreed that the cause be submitted to be argued in writing and decision entered in vacation as of this term with the same force and effect as if decision had been entered now.

On the 25th day of April, 1892, the court rendered a verdict by finding the defendant guilty as charged in the information.

Thereupon, on the same day, the defendant submitted to the court his motion for a new trial, alleging:

The verdict and finding is contrary to the law and the evidence in the case.

The evidence fails to show that the said liquors were not properly marked, or that the defendant was in any manner instrumental or connected with transporting or conveying between points, or from one place to another within the State of Iowa, intoxicating
11 liquors of any description.

The evidence does show:

That the liquors charged herein to have been illegally transported by this defendant were properly marked as required by the laws of Iowa and that the said shipment is not one that is prohibited by or in violation of the statutes of the State of Iowa.

That the liquors of which this defendant is charged with transporting had acquired no location in the State of Iowa, and therefore not subject to the jurisdiction thereof.

On the same day said motion for new trial was overruled and the court thereupon pronounced judgment upon the verdict and ordered and adjudged that the defendant pay a fine in the sum of one hundred dollars ($100) and that he stand committed until the same is paid.

To the finding of said verdict, the overruling of said motion for new trial and to the entering of said judgment, the defendant at the time duly excepted.

A bill of exceptions, as follows, was duly signed by the court and filed and made of record in this cause.

Be it known, that on the —day of October, 1891, this cause came on for trial in said court, D. Ryan, judge, the plaintiff appearing by C. J. Wilson, Co. att'y, and the defendant appearing by his attorney, H. M. Eicher.

A jury being waived the cause was submitted and tried to
12 the court and the following matters were introduced as testimony in the trial of said cause and its hearing, to wit:

1. The "agreed statement of facts" and the exhibits thereto attached and filed in this cause on the 6th day of October, 1891.

2. The testimony of the defendant as taken down in shorthand at the time by the shorthand reporter, the minutes and notes of which have heretofore been *been* filed in this cause, the same being as follows: (Here shall be inserted the extended notes of the shorthand reporter as hereinbefore referred to.) No other testimony was introduced in the said hearing and it was agreed that the cause should be submitted and verdict and judgment rendered in vacation to have same effect as if entered now.

Argument of counsel was heard after which the court rendered the following verdict and finding on the said 25th day of April, 1892, "Guilty as charged in the information," to which verdict and finding and the entering thereof the defendant then and there duly excepted.

On the said 25th day of April, 1892, after the said verdict and finding being made, the said defendant filed the motion for new trial as follows: (Here shall be inserted a full copy of said motion) and on the same day of the filing thereof the said motion was heard and considered by the said court, and by the court overruled, to which overruling of the said motion for new trial the defendant then and there duly excepted.

On the said 25th day of April, 1892, after the hearing and
13 overruling of the said motion for new trial the court entered the following judgment on the said finding and verdict: (Here insert copy of judgment.) To which judgment and the entering thereof the defendant then and there duly excepted.

This bill of exceptions is signed by the court and filed in this cause within the time provided for the same in the order therefor in the said court.

D. RYAN, *Judge.*

On the 14th day of October, 1892, the defendant took his appeal from the judgment of the said district court in this cause to the supreme court of Iowa by serving notice of such appeal in due form upon C. J. Wilson, county attorney of Washington county, Iowa, and attorney for the appellee in this proceeding, and upon S. W. Neal, clerk of the district court of Washington county, Iowa, and the said notice of appeal was on the same day filed and made a part of the record of this proceeding.

The foregoing pages are a true, complete and correct abstract and transcript of all the evidence, pleadings and proceedings had in the trial and determination of this cause and constitutes a complete abstract of the entire record of this proceeding from its inception and of all matters pertaining thereto.

H. M. EICHER,
*Attorney for Appellant.*

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(Endorsed:) "I hereby acknowledge due and legal service of this abstract, and acknowledge receiving copy this 14 day of Jan., 1894. C. J. Wilson, Co. att'y. Jno. Y. Stone, att'y gen'l."

15 And afterwards, on the 28th day of August, 1893, the appellant filed in the office of the clerk of said supreme court a printed amended abstract in the words and figures following, to wit:

16 In the Supreme Court of Iowa.

THE STATE OF IOWA, Appellee,
*vs.*
T. H. RHODES, Appellant.

Appeal from the judgment of the Washington district court.

At law.

D. Ryan, judge.
H. M. Eicher for the appellant.
C. J. Wilson for the appellee.

*Amendment to Appellant's Abstract.*

The defendant, as an amendment to his abstract herein filed, states:

That a true and correct copy of the information filed against the defendant in this action and referred to on page 1 in original abstract is as follows:

STATE OF IOWA, }
*Washington County,* } *ss:*

In Justice's Court, before E. W. Swisher, Justice of the Peace in and for Brighton City Township.

17 STATE OF IOWA }
*vs.* } Information.
T. H. RHODES. }

Complainant states that on the 6th day of August, A. D. 1891, the defendant, T. H. Rhodes, was agent at Brighton, in the county of Washington and State of Iowa, for the American Express Company and for the Burlington & Western Railway Company, and as agent aforesaid was in the employ of said American Express Company and said Burlington & Western Railway Company.

That said defendant, T. H. Rhodes, on the 6th day of August, A. D. 1891, at the township of Brighton city, in the county of Washington and State of Iowa, then and there being as agent aforesaid, did knowingly, wilfully and unlawfully receive for the purpose of delivering to another, certain intoxicating liquor that was being unlawfully transported or conveyed from Burlington, Iowa, to Brighton, Iowa, viz., one box containing a two-gallon jug, and said jug being full of whiskey, alcohol or other intoxicating liquor, said box being marked "W. H.," Brighton, Iowa, and was not plainly and correctly labeled or marked, showing the quantity and kind of liquor contained therein.

Contrary to statute in such case made and provided and against the peace and dignity of the State of Iowa.

Wherefore complainant asks that the said T. H. Rhodes be arrested and dealt with as the law directs.

Subscribed and sworn to.

Respectfully submitted.

H. M. EICHER,
*Attorney for Appellant.*

(Endorsed:) "Service accepted August 28, 1893. Jno. Y. Stone, att'y gen'l."

18 And said cause was duly submitted to said supreme court at its January term, 1894, and, the cause having been fully considered, said court, at its May term, 1894, on the 8th day of May, 1894, filed its opinion in writing, the same being in the words and figures following, to wit:

19 Filed May 8, 1894.

THE STATE OF IOWA, Appellee,
*vs.*
T. H. RHODES, Appellant.

Appeal from Washington district court—Hon. D. Ryan, judge.

The defendant was convicted and fined $100.00 for knowingly, wilfully, and unlawfully receiving, for the purpose of delivering to another, certain intoxicating liquors, which were being, as it is alleged, unlawfully conveyed in this State.

He appeals.

Jno. Y. Stone, att'y general, Thos. A. Cheshire, C. J. Wilson, and E. M. Shelton for appellee.

H. M. Eicher and Hedge & Blythe for appellant.

KINNE, *J.*:

1. The defendant was arrested upon an information charging that he was the agent of the Burlington & Western Railway Company at Brighton, Iowa, and that on August 6, 1891, as such agent, he "did knowingly, wilfully, and unlawfully receive, for the purpose of delivering to another, certain intoxicating liquor that was
20 being unlawfully transported or conveyed from Burlington, Iowa, to Brighton, Iowa, viz., one box containing a two-gallon jug, and said jug being full of whiskey, alcohol, or other intoxicating liquor, said box being marked 'W. H.,' Brighton, Iowa, and was not plainly or correctly marked, showing the quantity and kind of liquor contained therein."

The case was first tried before a justice of the peace, and defendant was convicted and fined $100.00. From this judgment he appealed to the district court, where a jury was waived and a trial had to the court. He was again found guilty and adjudged to pay a fine of $100.00, from which judgment this appeal is prosecuted. From the

evidence it appears that on August 4, 1891, the Dallas Transportation Company, a corporation doing business in the State of Illinois, delivered to the C., B. & Q. R'y Co., at Dallas, Ill., one wooden box about a cubic foot in size, marked "W. H., Brighton, Iowa;" that the consignor of said box, when it left it with the railway company for transportation, represented to the railway company that it contained groceries.

This box was shipped over the C., B. & Q. R'y to Burlington, Iowa, and then transferred to the B. & W. R'y for shipment to Brighton, Iowa. The shipment was made the entire distance upon a single waybill.

August 5, 1891, said box arrived at Brighton, and was delivered on the depot platform by the trainmen. Immediately thereafter the defendant, in compliance with the directions of his employers, carried said box from the platform into the freight-room of the depot building, where on the same day it was seized by a constable under a search warrant. At the time of the seizure the freight on the box was due and unpaid.

21 Enclosed in the box was a jug containing whiskey, but it was so enclosed as to be hidden from view. At the time it was seized the box was being held by the railway company for the payment of charges and for delivery to the consignee.

Neither the defendant nor the road by whom he was employed held a permit for the transportation or sale of intoxicating liquors, and neither had a certificate from the county auditor that the consignee was authorized to sell intoxicating liquors in Washington county, Iowa. Previous to the arrival of the box a mail-carrier told defendant he was looking for a box from Dallas city for William Hown, and said it was likely to be marked "W. H.," and would contain alcohol or whiskey; that he told the mail-carrier that he had not received a box of that description; that it arrived the next day. He supposed, perhaps, this was the box the mail-carrier told him would come.

2. The information in this case is based upon a violation of code, section 1553, as amended.

McClain's Code, section 2410. This section provides that:

"If any express company, railway company or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or of any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without first having been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported, or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or delivered, is

22 authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of such company, corporation, or person so offending, shall, upon conviction thereof, be fined in the sum of one

hundred dollars for each offense and pay costs of prosecution and the cost shall include a reasonable attorney fee to be assessed by the court which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid. The offense herein defined shall be held to be complete and shall be held to have been committed in any county of the State, through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of this State to issue the certificate herein contemplated, to any person having such permit and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires as shown by the county records. Provided, however, that the defendant may show as defense hereunder, by preponderance of evidence, that the character and circumstances of the shipment and its contents were unknown to him."

Under this section, in order to sustain the judgment in this case, it must appear that defendant, knowing that the box contained intoxicating liquor, transported or conveyed the same between points or from one place to another within this State without first having been furnished with a certificate from the county auditor. We think defendant's testimony, heretofore referred to, clearly shows that he knew that the box contained intoxicating liquors. It is conceded that neither defendant, his company, nor Mr. Hown had a right or permit to sell intoxicating liquors, and that neither defendant or said company had a certificate from the auditor of
23 Washington county showing that any of the persons named were authorized to keep or sell intoxicating liquors.

But two questions remain to be considered: First, did the liquor when it first entered this State become subject to the jurisdiction of our laws, or would such jurisdiction only attach when the shipment had reached its destination, viz., Brighton, Iowa, or when it was delivered to the consignee? and, second, was the defendant, in the removal of the liquor from the platform to the freight depot, engaged in transporting or conveying it within the meaning of the section quoted?

An elaborate argument is made by defendant's counsel to show that the liquor did not become subject to the jurisdiction of our laws until its "arrival in" this State, and it is contended that it did not arrive within this State within the meaning of the Wilson bill until the contract of carriage had been completed.

The so-called Wilson bill reads as follows:

"All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not

be exempt therefrom by reason of being introduced therein in 'original packages' or otherwise."

We do not deem it necessary to enter into an extended consideration as to what is interstate commerce. We think the lan-
24 guage of the Wilson bill, when considered with reference to the evil sought to be remedied, clearly indicates an intention on the part of Congress to make such liquors the subject of State legislation and jurisdiction the moment they cross the boundary of Iowa and enter the State.

Under the decision in Leisy's case, 135 U. S., 123, such liquors in original packages did not become the subject of State jurisdiction until mingled with the common mass of property therein until sold. In that case the right of Congress to permit the State to exercise jurisdiction over such articles prior to their sale therein was fully recognized. It was for the purpose of removing all impediments to local jurisdiction as to imported liquors on their arrival within such jurisdiction that the Wilson bill was passed.

Wilkerson, sheriff, *vs.* Rahrer, 11 Sup. Ct. Rep., 865.

By the Wilson bill these imported liquors upon arrival within the State were subjected to the operation of its laws enacted in the exercise of its police powers as fully as though such liquors had been produced in such State. Now, if in this case the liquor had been produced at a point within the State and consigned over the B. & W. R'y to Brighton, Iowa, there could be no question that our laws would apply thereto, and it is equally clear that upon crossing the border of this State and entering it such imported liquor becomes at once subject to its laws the same as — produced in the State.

*In re* Spickler, 43 Fed. Rep., 653, the circuit court of the U. S. in treating of this matter says: "The Wilson bill upon its adoption made subject to State police laws all imported liquors as soon
25 as they should pass within the boundary of the State."

In the case of *In re* Van Vliet, *id.*, 761, it is said: "The original package, when it arrives within the State where its transit terminates, is at once reduced to the rank of domestic liquor, enjoys no privileges not enjoyed by domestic liquor."

In State *ex rel.*, etc., *vs.* Fraser *et al.*, 48 N. W. Rep., 343, the court said: "On crossing the boundary line of a State the supreme authority has declared by this enactment that interstate liquor ceases to be an object of Federal protection and control and becomes mingled with the mass of property within the State, and, in common with all such property, is subject to local police regulations." If, as appellant contends, imported liquors consigned to a place within this State could be lawfully transported thereto, it is certain that such liquors would not be subject to the operation of our laws to the same extent and in the same manner as liquors produced in this State.

It seems to us the view that State jurisdiction attaches when the imported liquor enters the State is not only in accord with a reasonable construction of the Wilson bill itself, but in furtherance of

the purposes sought to be accomplished by the passage of that act, and finds full support in the authorities.

3. Was the defendant, in the removal of the liquor, engaged in transporting or conveying it within the meaning of our statute? The language of the statute is broad enough to cover the act of defendant in removing the liquor from the platform to the freight-room of the depot. He was one of the instruments necessary to complete the act of transportation. If it be not so, then clearly he is clearly within the terms of the act, as he conveyed the
26 liquor from "one place to another within this State." His guilt is not to be determined by the distance he conveyed the package, but his conveying it any distance was a violation of the law. With the propriety of legislation making such an act a crime, and with the severity of the punishment attached to doing the act, we have nothing to do.

The judgment below must be affirmed.

[Endorsed:] May 8th. State *v.* Rhodes.

27 And on the same day a final judgment was rendered in said court and duly entered of record, the same being in the words and figures following, to wit:

"THE STATE OF IOWA *vs.* T. H. RHODES, Appellant. } Appeal from Washington Dist. Court.

In this cause the court, being fully advised in the premises, file their written opinion affirming the judgment of the district court.

It is therefore considered by the court that the judgment of the court below be, and it is hereby, affirmed, and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellant pay the costs of this appeal, taxed at $22.75, and that execution issue therefor."

And afterwards there were filed in the office of said clerk, upon the dates respectively endorsed thereon, a petition for writ of error, writ of error bond, citation, and assignment of errors, the originals of which are hereto attached and transmitted herewith as part of the return to said writ, and true and correct copies thereof have been retained and lodged in the office of the clerk of said court.

28 To the honorable chief justice of the supreme court of the State of Iowa:

Your petitioner, T. H. Rhodes, conceiving himself aggrieved by the affirmance by the supreme court of the State of Iowa of a judgment entered against him in the district court of the State of Iowa in and for Washington county, in a suit wherein The State of Iowa is plaintiff and he is defendant, as set forth by the assignment of errors hereto attached and made a part hereof—the opinion affirming said judgment having been filed in said supreme court on May

8, 1894—prays that a writ of error be allowed in said cause from the Supreme Court of the United States to the supreme court of the State of Iowa.

J. W. BLYTHE AND
THOMAS HEDGE,
*Attorneys for T. H. Rhodes.*

Filed Jun- 26, 1894.

G. B. PRAY,
*Clerk Supreme Court.*

29 *Assignment of Errors.*

Filed June 26, 1894. C. B. Pray, clerk supreme court.

Now comes T. H. Rhodes, the defendant in the suit referred to in the attached petition for writ of error, by his attorneys, J. W. Blythe and Thomas Hedge, and says that the act of which he was found guilty and for which he was fined in said suit was done in the performance of a contract of transportation of an article of commerce (intoxicating liquor) from a point in the State of Illinois to a point in the State of Iowa, and that in the record and proceedings had in the supreme court of the State of Iowa in said suit in which he is the defendant and The State of Iowa is the plaintiff there is manifest error in this, to wit:

I.

The court erred in holding that the effect of the act of Congress of August 8, 1890, as follows:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise,"

is to render illegal or obnoxious to the operation of the criminal statutes of Iowa an act done in pursuance of a contract of transportation of an article of commerce from a point in another State to a point in the State of Iowa.

II.

The court erred in holding that the said act of Congress of August 8, 1890, gave jurisdiction or authority to the sovereignty of Iowa to invalidate or impair by its statute a contract of transportation of an article of commerce from a point in another State to a point within the limits of the State of Iowa.

III.

The court erred in holding that the liquor in question became subject to the operation of section 1553 of the Code of Iowa before the act of transportation was completed and the contract of transportation performed according to its terms, said section 1553 being as follows, to wit:

"If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without first having been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or delivered, is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of such company, corporation, or person so offending, shall, upon conviction thereof, be fined in the sum of one hundred dollars for each offense and pay costs of prosecution and the cost shall include a reasonable attorney fee to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid. The offense herein defined shall be held to be complete and shall be held to have been committed in any county of the State, through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation or in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of this State, to issue the certificate herein contemplated, to any person having such permit, and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires as shown by the county records. Provided, however, that the defendant may show as a defense hereunder by preponderance of evidence that the character and circumstances of the shipment and its contents were unknown to him."

IV.

The court erred in holding the defendant guilty of violation of said section 1553 of the Code of Iowa, as said section can have no force or effect to forbid the performance of a legitimate contract of transportation of an article of commerce from a point in another State to a point in Iowa.

V.

The court erred in holding that said section 1553 of the Code of Iowa was not repugnant to the Constitution and laws of the United States in so far as said section attempted to forbid the transportation of intoxicating liquor in the original package from the boundary of

the State of Iowa to the destination of the same within said State without the certificate in said section provided for, said trans-
31 portation within the State of Iowa constituting a part of an interstate journey, the initial point of which was without the State of Iowa.

Wherefore the said T. H. Rhodes prays that the judgment of the supreme court of the State of Iowa be reversed.

J. W. BLYTHE,
THOMAS HEDGE,
*Attorneys for T. H. Rhodes.*

Filed Jun- 26, 1894.

G. B. PRAY,
*Clerk Supreme Court.*

32 Filed Jun- 26, 1894. G. B. Pray, clerk supreme court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Iowa, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Iowa, as plaintiff, and T. H. Rhodes, as defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or
33 of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said T. H. Rhodes, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within — days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
*Clerk of the Circuit Court of the United States for the Southern District of Iowa.*

Allowed by—
C. T. GRANGER,
*Chief Justice of the Supreme Court of the State of Iowa.*

[Endorsed:] Filed Jun- 26, 1894. G. B. Pray, clerk supreme court.

34 Know all men by these presents that we, T. H. Rhodes, as principal, and —— ——, as sureties, are held and firmly bound unto the State of Iowa in the full and just sum of five hundred dollars, to be paid to the said State of Iowa, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of June, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a term of the supreme court of the State of Iowa, in a suit depending in said court between The State of Iowa and T. H. Rhodes, a judgment was rendered against the said T. H. Rhodes, and the said T. H. Rhodes having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Iowa, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said T. H. Rhodes shall prosecute said writ to effect and pay said judgment, or such part of it as the Supreme Court of U. S. direct, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

T. H. RHODES. [SEAL.]
C. E. PERKINS. [SEAL.]
C. M. LEVEY. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Above bond approved, the same to operate as a supersedeas, bail, and stay bond.

C. T. GRANGER,
*Chief Justice of the Supreme Court of the State of Iowa.*

[Endorsed:] Filed Jun- 26, 1894. G. B. Pray, clerk supreme court.

35 UNITED STATES OF AMERICA, *ss:*

To the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein T. H. Rhodes is the plaintiff in error and you are defendant in errow, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. T. Granger, chief justice of the supreme court of the State of Iowa, this 26th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

C. T. GRANGER,
*Chief Justice of the Supreme Court of the State of Iowa.*

36 Rec'd this writ at Des Moines, Iowa, June 26, 1894, and on June 27, 1894, I delivered a true copy thereof to Frank D. Jackson, governor of Iowa, at his office in Des Moines, Iowa, and on the 7th day of July, 1894, I delivered a true copy thereof to John Y. Stone, attorney general of the State of Iowa, at Council Bluffs, Ia.

FRANK P. BRADLEY,
*U. S. Marshal, Southern District of Iowa,*
By S. S. ETHRIDGE, *Deputy.*

37 STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record and proceedings of a cause, tried and determined in said court, between The State of Iowa, plaintiff, and T. H. Rhodes, defendant, appellant, to wit, the record, consisting of appellant's abstract and amended abstract and the opinion and final judgment entry, filed in said cause and duly entered of record.

And I further certify that the originals of petition for writ of error, writ of error, bond, citation, and assignment of errors (true and correct copies of which remain lodged in my office) are hereto attached and made a part of this transcript, and this return is made in obedience to said writ of error.

Seal of the Supreme Court of Iowa.

In testimony whereof witness my signature and official seal, at Des Moines, Iowa, this 3rd day of July, 1894.

G. B. PRAY,
*Clerk Supreme Court of Iowa.*

Endorsed on cover: Case No. 15,648. Iowa supreme court. Term No., 146. T. H. Rhodes, plaintiff in error, *vs.* The State of Iowa. Filed July 24th, 1894.

No. 21.

Brief of Blythe Lot (15,648.) P. C.

SEP 18 18
CLERK

Filed Sept. 18, 1896.

IN THE

# SUPREME COURT OF THE UNITED STATES.

**October Term, 1896.**

No. 146.

---

T. H. RHODES, *Plaintiff in Error,*

*vs.*

THE STATE OF IOWA.

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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## Assignment of Errors and Argument.

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BURLINGTON, IOWA:
ACHES, BLACKMAR & CO., PRINTERS.
1896.

IN THE

# SUPREME COURT OF THE UNITED STATES.

**October Term, 1896.**

No. 146.

---

T. H. RHODES, *Plaintiff in Error,*

*vs.*

THE STATE OF IOWA.

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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## STATEMENT OF THE CASE.

The plaintiff in error, T. H. Rhodes, was the station agent at Brighton, Iowa, of a railway company, whose road was operated by steam, and which was a common carrier of goods and chattels thereon, for hire.

Its road, by its connection with other railroads, formed a continuous line for the transportation of freight from Dallas, Illinois, to Brighton, Iowa. August 5th, 1891, in the course of his business as station agent, plaintiff in error removed a box of merchandise from the car of his employer, the said railway company, across its platform into its freight house at said Brighton, Iowa. This box had been shipped at Dallas, Illinois, for Brighton, and had been brought by said railway and its connections from Dallas, Illinois, to Brighton, Iowa, under and in pursuance of a contract of carriage entered into and undertaken at Dallas, Illinois.

It was marked "Groceries," and with the address of a consignee at Brighton. It contained a jug of intoxicating liquor which was concealed. But plaintiff had information of its presence.

Now, plaintiff's act of removing this box from the car to the warehouse was in pursuance of said contract of shipment; was within its obligation and was a necessary part of its performance. "It has been held by the court and must be "regarded as the settled law of the state, that the liability of "a railway company as a common carrier of freight terminates, and its responsibility as a warehouseman commences "upon the arrival of the goods at the point of destination, "and depositing them at the warehouse of the company to "await the convenience of the consignee, when the common "carrier has transported the freight to its destination, and "done all of the acts pertaining to the carriage of the goods, "his liability as such common carrier ceases." *Independence Mills Company vs. B., C. R. & N. Ry. Co.*, 72 Iowa, 539.

For this act he was arrested on the charge of a violation of section 1553 of the Code of Iowa, viz:

"If any express company, railway company, or any agent "or person in the employ of any express company, or of any "common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey "between points, or from one place to another within this "state, for any other person or persons or corporation, any "intoxicating liquors, without first having been furnished "with a certificate from and under the seal of the county "auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which "it is to be conveyed from place to place, certifying that the "consignee or person to whom said liquor is to be transported, conveyed or delivered, is authorized to sell such "intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any "agent of such company, corporation, or person so offending, "shall, upon conviction thereof, be fined in the sum of one "hundred dollars for each offense, and pay costs of prosecu-

"tion, and the cost shall include a reasonable attorney fee to "be assessed by the court, which shall be paid into the county "fund, and stand committed to the county jail until such fine "and costs of prosecution are paid. The offense herein de- "fined shall be held to be complete, and shall be held to have "been committed in any county of the state, through or to "which said intoxicating liquors are transported, or in which "the same is unloaded for transportation, or in which said "liquors are conveyed from place to place or delivered. It "shall be the duty of the several county auditors of this state "to issue the certificate herein contemplated, to any person "having such permit, and the certificate so issued shall be "truly dated when issued, and shall specify the date at which "the permit expires as shown by the county records. *Pro-* "*vided*, however, that the defendant may show as a defense "hereunder by preponderance of evidence, that the character "and circumstances of the shipment and its contents were "unknown to him."

And on an agreed statement of facts showing as above that the transaction was one of interstate commerce, he was found guilty and judgment entered against him. Appeal was taken to the Supreme Court of Iowa, and May 8th, 1894, the Supreme Court, stating that "but two questions remain "to be considered; first, did the liquor when it first entered "this State become subject to the jurisdiction of our laws, or "would such jurisdiction only attach when the shipment had "reached its destination, viz: Brighton, Iowa, or when it was "delivered to the consignee? and, second, was the defendant, "in the removal of the liquor from the platform to the "freight depot, engaged in transporting or conveying it "within the meaning of the section (1553) quoted," did affirm the judgment of the trial court, holding that, by virtue of the Act of Congress of August 8th, 1890, known as "The Wilson Bill," viz: "all fermented, distilled, or other intoxi- "cating liquors or liquids transported into any state or terri- "tory, or remaining therein for use, consumption, sale or "storage therein, shall, upon arrival in such state or territory, "be subject to the operation of the laws of such state or ter-

"ritory, enacted in the exercise of its police powers, to the "same extent and in the same manner as though such liquids "or liquors had been produced in such state or territory, and "shall not be exempt therefrom by reason of being intro- "duced therein in original packages or otherwise," the liquor became subject to the jurisdiction of the laws of Iowa when it first entered the State of Iowa; and, second, that the defendant in the removal of the liquor from the platform to the freight depot was engaged in carrying it within the meaning of Section 1553, in criminal violation of that section and became liable to its penalties.

We regard the above statement of the Supreme Court of Iowa concerning the questions involved to be correct, and as a fair statement of the questions we submit to this Court.

The error of the Supreme Court of Iowa complained of arises from its interpretation of the Act of Congress of August 8, 1890, which error we submit under the following assignment of errors:

## ASSIGNMENT OF ERRORS.

I.

The Court erred in holding that the effect of the Act of Congress of August 8th, 1890, as follows:

"That all fermented, distilled, or other intoxicating liquors "or liquids transported into any state or territory or remain- "ing therein for use, consumption, sale or storage therein, "shall, upon arrival in such state or territory, be subject to "the operation and effect of the laws of such state or territory "enacted in the exercise of its police powers, to the same ex- "tent and in the same manner as though such liquids or "liquors had been produced in such state or territory, and "shall not be exempt therefrom by reason of being intro- "duced therein in original packages or otherwise," is to render illegal or obnoxious to the operation of the criminal statutes of Iowa an act done in pursuance of a contract of transportation of an article of commerce from a point in another state to a point in the state of Iowa.

II.

The Court erred in holding that the said Act of Congress of August 8th, 1890, gave jurisdiction or authority to the sovereignty of Iowa to invalidate or impair by its statute a contract of transportation of an article of commerce from a point in another state to a point within the limits of the state of Iowa.

III.

The Court erred in holding that the liquor in question became subject to the operation of section 1553 of the Code of Iowa, before the act of transportation was completed and the contract of transportation performed according to its terms, said section 1553 being as follows, to-wit:

"If any express company, railway company, or any agent "or person in the employ of any express company, or of any

"common carrier, or any person in the employ of any com-
"mon carrier, or if any other person shall transport or con-
"vey between points, or from one place to another within
"this state, for any other person or persons or corporation,
"any intoxicating liquors, without first having been fur-
"nished with a certificate from and under the seal of the
"county auditor of the county to which said liquor is to be
"transported or is consigned for transportation, or within
"which it is to be conveyed from place to place, certifying
"that the consignee or person to whom said liquor is to be
"transported, conveyed or delivered, is authorized to sell such
"intoxicating liquors in such county. such company, cor-
"poration, or person so offending, and each of them, and any
"agent of such company, corporation, or person so offending,
"shall, upon conviction thereof, be fined in the sum of one
"hundred dollars for each offense and pay costs of prosecu-
"tion, and the cost shall include a reasonable attorney fee to
"be assessed by the court, which shall be paid into the county
"fund, and stand committed to the county jail until such fine
"and costs of prosecution are paid. The offense herein de-
"fined shall be held to be complete and shall be held to have
"been committed in any county of the state, through or to
"which said intoxicating liquors are transported, or in which
"the same is unloaded for transportation, or in which
"said liquors are conveyed from place to place or delivered.

"It shall be the duty of the several county auditors of this
"state to issue the certificate herein contemplated to any per-
"son having such permit, and the certificate so issued shall
"be truly dated when issued, and shall specify the date at
"which the permit expires as shown by the county records.
"*Provided*, however, that the defendant may show as a de-
"fense hereunder, by preponderance of evidence, that the
"character and circumstances of the shipment and its con-
"tents were unknown to him."

IV.

The Court erred in holding the defendant guilty of viola-
tion of said section 1553 of the Code of Iowa, as said section

can have no force or effect to forbid the performance of a legitimate contract of transportation of an article of commerce from a point in another state to a point in Iowa.

V.

The Court erred in holding that said section 1553 of the Code of Iowa was not repugnant to the Constitution and laws of the United States in so far as said section attempted to forbid the transportation of intoxicating liquor in the original package from the boundary of the state of Iowa to the destination of the same within said state without the certificate in said section provided for, said transportation within the State of Iowa constituting a part of an interstate journey, the initial point of which was without the state of Iowa.

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The Plaintiff in Error presents the following Points:

1. The article which plaintiff is convicted of transporting is by the consent and definition of all commercial nations an article of commerce.

2. His act was in the course of his employment as a servant of a common carrier for hire, and was a regular and necessary part of the performance of a contract made in Illinois for the transportation of goods from a point in the State of Illinois to a point in the State of Iowa.

3. This contract of transportation the common carrier was obliged to undertake (*a*) by the law of Illinois, *Bowman vs. Railway Co.*, 125 U. S., pp. 484–486, and (*b*) by the laws of Congress. The Act to Regulate Commerce, § 3, approved February 4, 1887.

4. The jurisdiction of Congress to regulate such a transaction is exclusive.

5. (*a*) The subject matter of such a contract of transportation cannot be made subject to the operation of the laws of a state enacted in the exercise of its police power, so long as its character or condition as a subject of interstate commerce continues, without the consent of Congress.

(*b*) The police laws of the state cannot operate upon the act of transportation from another state to a point within its own territory, to forbid or to regulate, as such regulation is vested by the Constitution exclusively in Congress.

6. "The power to regulate commerce among the states "was vested in Congress to insure uniformity of regulation "against conflicting and discriminating state legislation." 125 U. S., 485.

Since if the states may be permitted to exercise this power the regulations may be various and conflicting, Congress may not permit it to the states, but must itself exercise this power if it is to be exercised at all.

7. Even if Congress may by law expressly permit the laws of the states enacted in the exercise of their police power to prevent or to variously regulate traffic within their territory in certain specified subjects of interstate commerce, it may not permit such laws to prevent or to regulate the performance of contracts for the transportation of such articles, legitimately undertaken.

8. From the history of the enactment of the law of Congress of August 8, 1890, and from the natural interpretation of the language of that law; it appears that Congress did not intend to permit the various police laws of the states to affect that element of commerce among the states which consists in the transportation of merchandise.

## ARGUMENT.

### I.

1. The article which the plaintiff in error is convicted of transporting is, by the consent and definition of all commercial nations, an article of commerce.

It has been declared to be a legitimate article of commerce in all the decisions of this court wherein the discussion of its nature was relevant. *Leisey vs. Hardin*, 135 U. S., 110; opinion of Mr. Justice CATRON, License cases, 5 Howard, 599.

2. Its transportation from a foreign state into one of the United States, or from one of the United States into another, has been held by this court to be a transaction of international or interstate commerce, and therefore its permission, or prohibition, or regulation within the exclusive jurisdiction of the national congress, under Sec. 8, of Art. I, of the national constitution.

In the case of *Pierce vs. New Hampshire*, 5 Howard, 504–554, in the absence of regulation by Congress, regulation of such commerce by a state was upheld. This decision was overruled in the case of *Leisey vs. Hardin*, 135 U. S., 188, in this language: "The authority of *Pierce vs. New Hamp-*
"*shire*, in so far as it rests on the view that the law of New
"Hampshire was valid because Congress had made no regula-
"tion on the subject, must be regarded as having been dis-
"tinctly overthrown by the numerous cases hereinafter
"referred to:"

*Bowman vs. Ry. Co.*, 125 U. S., 507.
Case of *State Frt. Tax*, 15 Wallace, 232.
*Henderson vs. Mayor of New York*, 92 U. S., 259.
*R. R. Co., vs. Husen* 95 U. S., 465.
*Cook vs. Pennsylvania*, 97 U. S., 566.
*Wabash & St. Louis Ry. vs. Illinois*, 118 U. S., 557.
*Robbins vs. Shelby Taxing District*, 120 U. S., 489.
*Welton vs. Missouri*, 91 U. S., 275.
*Walling vs. Michigan*, 116 U. S., 446.

*Bowman vs. Chicago &c. Ry. Co.*, 125 U. S., 479: "It can "not be doubted that the law of Iowa, regarded as a rule for "the transportation of merchandise, operates as a regulation "of commerce among the states;" and page 493, "The statute "of Iowa under consideration (Sec. 1553) falls within this "prohibition. It is not an inspection law. It is not a "quarantine or sanitary law. It is essentially a regulation of "commerce among the states within any definition hereto-"fore given of that term or which can be given."

The article in question, a package of intoxicating liquor, being an article of commerce, and its transportation from a shipper in Illinois to a consignee in Iowa being an act of commerce between those two states, Congress had jurisdiction over the article so long as it was the subject of such commerce, and jurisdiction to permit, to forbid, or to regulate its transportation from the point of shipment in one state to the completion of its transportation in the other in pursuance of the contract of carriage, and this jurisdiction was exclusive.

*Bowman vs. Chicago &c. Ry. Co.*, 125 U. S., 485, citing *County of Mobile vs. Kimball*, 102 U. S., 702.

"Commerce with foreign countries and among the states, "strictly considered, consists in intercourse and traffic, includ-"ing in these terms navigation and the transportation and "transit of persons and property, as well as the purchase, "sale, and exchange of commodities. For the regulation of "commerce as thus defined there can be only one system of "rules applicable alike to the whole country; and the "authority which can act for the whole country can alone "adopt such a system. Action upon it by separate states is "not, therefore, permissible." And *Hall vs. DeCuir*, 95 U. S., 485–88: "Uniformity in the regulation by which he, "the carrier of passengers, is to be governed from one end to "the other of his route is a necessity in his business, and to "secure it, Congress, which is untrammeled by state lines, has "been invested with the exclusive legislative power of deter-"mining what such regulation shall be."

*Leisey vs. Hardin*, 135 U. S., 112. "But the transporta-

"tion of passengers or of merchandise from one state to "another is, in its nature, national, admitting of but one regu- "lating power, and it was to guard against the possibility of "commercial embarrassments which would result if one state "could, directly or indirectly, tax persons or property passing "throught it, or prohibit particular property from entrance "into the state, that the power of regulating commerce "among the states was conferred upon the general govern- "ment."

"If in the present case," said Mr. Justice MATTHEWS in the Bowman case, "the laws of Iowa (Sec. 1553) operated upon "all merchandise sought to be brought from another state "into its limits, there could be no doubt it would be a regu- "lation of commerce among the states," and he concludes that this must be so, though it applied only to one class of articles of a particular kind.

*State Freight Tax Case*, 15 Wallace, 279. "* * * the "rule has been asserted with great clearness that whenever "the subjects on which a power to regulate commerce is "asserted are in their nature national, or admit of one "uniform system or plan of regulation, they may justly be "said to be of such a nature as to require exclusive legisla- "tion by congress, and surely transportation of passengers or "merchandise through a state, or from one state to another, "is of this nature. It is of national importance that over that "subject there should be but one regulating power, for if one "state can directly tax persons or property passing through "it, or can tax them indirectly by levying a tax upon their "transportation, every other may, and thus commercial inter- "course between states remote from each other may be des- "troyed. The produce of western states may thus be "effectually excluded from eastern markets, for though it "might bear the imposition of a single tax, it would be "crushed under the load of many. It was to guard against "the possibility of such commercial embarrassment, no doubt, "that the power of regulating commerce among the states "was conferred upon the federal government."

It seems settled that the states may not directly by taxa-

tion, either of the article of commerce or by levying a tax upon its transportation, or by any legislation, directly regulate commerce between the states; nor can they, in the exercise of their police power, indirectly regulate such commerce by excluding from the class of commercial commodities any articles which are the subjects of lawful commerce and sale in the civilized world and recognized as such by the laws of the nation.

The opinion of Mr. Justice CATRON in the case of *Pierce vs. New Hampshire*, has been frequently cited with approval by this court, in the review of this Iowa statute in the Bowman case, 125 U. S., 429, as "very much to the point."

LICENSE CASES, FIFTH HOWARD U. S., 599.

JUSTICE CATRON'S OPINION.

"The article in question was introduced from one State "directly into another, and the first question is: Was it a "subject of lawful commerce among the states, that Con- "gress can regulate? That ardent spirits have been for "ages, and now are, subjects of sale and of lawful commerce, "and that of a large class, throughout a great portion of the "civilized world, is not open to controversy; so our commer- "cial treaties with foreign powers declare them to be, and so "the dealing in them among the states of this Union recog- "nizes them to be. But this condition of the subject matter "was met by the State decision on the ground, and on this "only, that the State might pass health and police laws which "would, to a certain extent, affect foreign commerce and "commerce between the states; and that the statute (of New "Hampshire) was a regulation of that character, and consti- "tutional.

"This was the charge to the jury, and on it the verdict "and judgment are founded, which the State court of last "resort affirmed. The law and the decision apply equally to "foreign and to domestic spirits, as they must do on the "principles assumed in support of the law. The assumption "is, that the police power was not touched by the constitu- "tion, but left to the states as the constitution found it.

"This is admitted; and whenever a thing, from character or "condition, is of a description to be regulated by that power "in the State, then the regulation may be made by the State, "and Congress cannot interfere. But this must always "depend on facts, subject to legal ascertainment, so that the "injured may have redress. And the fact must find its sup- "port in this, whether the prohibited article belongs to, and "is subject to be regulated as part of, foreign commerce or of "commerce among the states. If, from its nature, it does not be- "long to commerce, or if its condition, from putrescence or other "cause, is such when it is about to enter the state that it no "longer belongs to commerce, or, in other words, is not a "commercial article, then the State power may exclude its "introduction. And, as an incident to this power, a State "may use means to ascertain the fact. And here is the limit "between the sovereign power of the State and the federal "power. That is say, that which does not belong to com- "merce is within the jurisdiction of the police power of the "State; and that which does belong to commerce is within "the jurisdiction of the United States. And to this limit "must all the general views come, as I suppose, that were "suggested in the reasoning of this court in the cases of "*Gibbons vs. Ogden*, *Brown vs. The State of Maryland*, and "*New York vs. Miln*.

"What, then, is the assumption of the State court? "Undoubtedly, in effect, that the State had the power to "declare what should be an article of lawful commerce in "the particular State; and, having declared that ardent "spirits and wines were deleterious to morals and health, "they ceased to be commercial commodities there, and that "then the police power attached, and consequently the powers "of Congress could not interfere. The exclusive State "power is made to rest, not on the fact of the state or con- "dition of the article, nor that it is property usually passing "by sale from hand to hand, but on the declaration found in "the State laws, and asserted as the State policy, that it shall "be excluded from commerce. And by this means the "sovereign jurisdiction in the State is attempted to be

"created, in a case where it did not previously exist.

"If this be the true construction of the constitutional pro-"vision, then the paramount power of Congress to regulate "commerce is subject to a very material limitation; for it "takes from Congress, and leaves with the State, the power to "determine the commodities, or articles of property, which "are the subjects of lawful commerce. Congress may regu-"late, but the States determine what shall or shall not be "regulated.

"Upon this theory, the power to regulate commerce, "instead of being paramount over the subject, would become "subordinate to the State police power: for it is obvious that "the power to determine the articles which may be the subject "of commerce, and thus to circumscribe its scope and opera-"tion, is, in effect, the controlling one. The police power "would not only be a formidable rival, but, in a struggle, "must necessarily triumph over the commercial power, as "the power to regulate is dependent upon the power to fix "and determine upon the subjects to be regulated.

"The same process of legislation and reasoning adopted by "the State and its courts could bring within the police power "any article of consumption that a State might wish to "exclude, whether it belonged to that which was drank, or "to food and clothing; and with nearly equal claims to "propriety, as malt liquors and the produce of fruits other "than grapes stand on no higher grounds than the light "wines of this and other countries, excluded, in effect, by the "law as it now stands. And it would be only another step "to regulate real or supposed extravagance in food and cloth-"ing. And in this connection it may be proper to say, that "the three States whose laws are now before us had in view "an entire prohibition from use of spirits and wines of every "description, and that their main scope and object is to "enforce exclusive temperance as a policy of State, under the "belief that such a policy will best subserve the interests of "society; and to this end, more than to any other, has the "sovereign power of these States been exerted; for it was "admitted, on the argument that no licenses are issued and

"that exclusion exists, so far as the laws can produce the "result,—at least, in some of the States,—and that this was "the policy of the law. For these reasons, I think the case "cannot depend on the reserved power in the State to regu- "late its own police.

"Had the gin imported been an import from a foreign "country, then the license law prohibiting its sale by the "importer would be void. The reasons for this conclusion "are given in my opinion on the case of *Thurlow vs. The Com- "monwealth of Massachusetts*, and need not be repeated, and "are founded on the case of *Brown vs. The State of Maryland*. "The next inquiry is, did it stand on the foot of an import, "coming, as it did, from another State? If it be true, as the "State courts held it was, that Congress has the exclusive "power to regulate commerce among the States (the States "having none,) and the gin introduced being an article of "commerce, and the State license law being a regulation of "commerce (as it was held by this court to be in the case of "*Brown vs. The State of Maryland*,) then the State law is "void, because the State had no power to act in the matter "by way of regulation to any extent."

II.

It is thus settled that the application of Section 1553 to this commerce between Iowa and another state is a regulation of commerce. It is an exercise of the police power of the state of Iowa over this commerce, and is therefore prohibited, because it is a regulation of commerce between states and an exercise of the police power of the state of Iowa, "over a "subject confided exclusively to congress by the federal con- "stitution." It necessarily follows that the Act of Congress of August 8, 1890, the Wilson Bill, permitting the exercise of this police power, delegates power to regulate commerce in regard to a certain commercial article. It "removes an "impediment to the enforcement of the law" of Iowa, an impediment not created by any law of Congress, or by the silence of Congress, but by the terms of the federal constitution.

It will not be contended that Congress might thus make, subject "upon arrival in any state or territory, to the opera-"tion of the laws of that state enacted in the exercise of "its police power," all subjects of commerce between the states, and thus by one sweeping act of conveyance transfer and delegate to the several states its power to regulate commerce. This would be an abdication of authority, a repudiation of the duty imposed on Congress by the constitution, and there is no logical reason within the reach of our understanding which makes it competent for Congress to select any one subject of commerce and exclude it from the operation of the rule prescribed by the constitution. We are unable, then, to perceive any legal justification for the permission that any police laws of any state shall be effectual upon any recognized article of commerce. Interstate commerce is within the exclusive jurisdiction of Congress and exempt from the local jurisdiction of the state. Every subject of it equally with every other is within this exclusive jurisdiction, and exempt from the local jurisdiction. It is only when it ceases to be a subject of interstate commerce that the local jurisdiction can control, and it does not cease to be such subject of commerce except as a commercial fact, and not as a result of statutory enactment. If the supposed moral necessities of one state may justify premission to exclude liquor from its territory, why may not the race prejudices of another justify the permission to exclude pork from its territory, or the commercial greed of another justify permission to exclude the cotton or corn of all others from its market or its soil? Can the definition of commerce be left to the separate states? In fact, is the definition of commerce subject even to the will of Congress? Can either the separate states, or can Congress itself enlarge, abridge or amend the Federal Constitution by statutory declaration of what shall or shall not be articles of commerce? Are not the limits of this term set by the sense and concurrence of the commercial world, to be ascertained and announced only by the authentic decision of this court?

If this package of liquor which this plaintiff handled was

not an article of commerce between states, and if this act of handling was not an act of commerce, Sec. 8 of Art. I of the Constitution has no application, and no permission of the State of Iowa is necessary or pertinent to enforce Sec. 1553 against him, and the Act of Congress of August 8, 1890, is supererogatory and impertinent. But if it was an article of commerce between states, and if plaintiff was engaged in an act of commerce between Illinois and Iowa, it was such an article and such an act as was intended by the framers of the Constitution to be under the exclusive control of Congress. They made and anticipated no distinction among the subjects of commerce between the states. All these are equally within the national jurisdiction. The line of separation was drawn between commerce between the states, and commerce within each state. This was the only line and the only distinction, and this line remains.

The Constitution, in Sec. 10 of Art. I, specifies certain things which the states may not do without the "consent of Congress," and by implication provides that any of these specified things may be done upon the "consent of "Congress," and it seems to us that these include all the cases in which the "consent of Congress" is necessary or useful. In all other matters, the question is one of legislative jurisdiction. The limits of that jurisdiction must finally be ascertained and declared by this court. If the state has jurisdiction, the consent of Congress is not a matter of concern. It is valueless because unnecessary. If it has not jurisdiction, the consent of Congress is still not a matter of concern; it is valueless because ineffectual.

"It does not admit of argument that Congress can neither "delegate its own powers nor enlarge those of states." *In re Rahrer*, 140 U. S., 560.

III.

Congress may not permit the police laws of each state to take effect upon commerce or upon the subjects of commerce between the states, because there can be no assurance that the operation of such laws would be uniform.

There can be no constitutional legislation by Congress

which does not, in its terms or by necessary implication, set forth the will of Congress. If any legislation is thought by Congress necessary to control interstate traffic or its subjects, that necessary legislation must be the exclusive act of Congress. Congress must in terms forbid or permit, must prescribe or define the regulation, must affix the fines and penalties, and such regulation must be at all times under the control of the enacting power, and its enforcement must be committed exclusively to the executive officers of the national government.

The Act of August 8, 1890, in effect delegates to the separate states power not to adopt or to reject certain regulations in terms adopted and set forth by Congress; but in regard to this subject matter of commerce it gives a free warrant, a blank commission, to every state to legislate as it will. It permits forty-five different systems of regulation of commerce in liquor, and these not permanent and stable, but surely and constantly changing, according to the whim and caprice of local opinion.

We are unable to imagine a more entire and effectually hurtful delegation of power than that which permits Kansas and Iowa to forbid as crime what Illinois or Missouri may protect and encourage as commerce, which permits to be punished as a misdemeanor, or even as a felony, to-day, the useful trade of yesterday, which makes legitimate and proper commerce a question of geography and a matter of sectional and ephemeral prejudice.

That these are not forebodings of fancy, but the fair suggestions of real and practical difficulties and obstructions to the business of the country, is apparent upon passing observation of the multiplicity and diversity of the state liquor laws now in force, and brief recollection of the experimental legislation of the past. In Iowa we have endured a free and unlimited distillery; then we prohibited the use of all American liquor except for mechanical, etc., purposes, but permitted the importation of foreign liquor; next we permitted the unlimited sale and drinking of beer, and of wine made from Iowa grapes—not preventing, but protecting and promot-

ing intemperance, provided it begun at home,—and so on, with almost biennial deviations, through total prohibition to the present sale of indulgences called the Mulct law, by which in one township or precinct on certain conditions prosecution for violation of the liquor law (still proclaimed to be in force) is by law suspended. The Wilson Bill attempts to place no limitation upon this disorderly exercise of the police power; there is no check to its infinite variety; each state prescribes its own procedure and fixes its own pains and penalties.

In *County of Mobile vs. Kimball*, 102 U. S., 702, cited in *Bowman vs. Ry. Co.*, 125 U. S., 485, this court holds: "Com-"merce with foreign countries and among the states, strictly "considered, consists in intercourse and traffic, including in "these terms navigation and the transportation and transit "of persons and property, as well as the purchase, sale and "exchange of commodities. For the regulation of commerce "as thus defined there can be only one system of rules appli-"cable alike to the whole country; and the authority which "can act for the whole country can alone adopt such a sys-"tem." On page 486, "The law of the state of Iowa (Sec. "1553), while it professes to regulate the conduct of carriers "engaged in transportation within the limits of that state, "nevertheless materially affects, if allowed to operate, the "conduct of such carriers, both as respects their rights and "obligations in every other state into or through which they "pass in the prosecution of their business of interstate trans-"portation. In the present case the defendant is sued as a "common carrier in the State of Illinois, and the breach of "duty alleged against it is a violation of the law of that state "in refusing to receive and transport goods which, as a com-"mon carrier, by that law, it was bound to accept and carry. "It interposes as a defense a law of the State of Iowa, which "forbids the delivery of such goods within that state. Has "the law of Iowa any extra-territorial force which does not "belong to the law of the State of Illinois? If the law of "Iowa forbids the delivery, and the law of Illinois requires "the transportation, which of the two shall prevail? In view

"of this necessary operation of the law of Iowa, if it be valid, "the language of this court in the case of *Hall vs. DeCuir*, "95 U. S., 485–488, is exactly in point. It was there said: "'But we think it may safely be said that state legislation "which seeks to impose a definite burden upon interstate com- "merce, or to interfere directly with its freedom, does en- "croach upon the exclusive power of Congress. The statute "now under consideration, in our opinion, occupies that posi- "tion. It does not act upon the business through the local "instruments to be employed after coming within the state, "but directly upon the business as it comes into the state "from without, or goes out from within. While it purports "only to control the carrier when engaged within the state, "it must necessarily influence his conduct to some extent in "the management of his business throughout his entire voy- "age. * * * It was to meet just such a case that the "commercial clause in the constitution was adopted. The "river Mississippi passes through or along the borders of ten "different states, and its tributaries reach many more. The "commerce upon these waters is immense, and its regulation "clearly a matter of national concern. If each state was at "liberty to regulate the conduct of carriers while within its "jurisdiction, the confusion likely to follow could not but "be productive of great inconvenience and unnecessary hard- "ship. Each state could provide for its own passengers and "regulate the transportation of its own freight, regardless of "the interests of others. Nay, more; it could prescribe rules "by which the carrier must be governed within the state, in "respect to passengers and property brought from without. "On one side of the river, or its tributaries, he might be re- "quired to observe one set of rules, and on the other, another. "Commerce can not flourish in the midst of such embarrass- "ments. * * * Uniformity in the regulations by which "he (the carrier) is to be governed from one end to the other "of his route is a necessity in his business, and to secure it, "Congress, which is untrammeled by State lines, has been "invested with the exclusive legislative power of determining "what such regulation shall be.'"

IV.

The Act of Congress of August 10, 1890, does not permit the police law of Iowa to operate upon that branch of interstate commerce which consists in transportation, or to avoid or impair the contract of transportation.

Commerce is the "exchange of merchandise on a large "scale between different places." Under any proper definition it has two branches or essential elements, namely: transportation and exchange or sale. "The very purpose and "motive of that branch of commerce which consists in trans-"portation is that other and consequent act of commerce "which consists in the sale and exchange of the commodi-"ties transported." *Bowman vs. Ry.*, 125 U. S., 499.

"It is manifest, whether as an abstract proposition or "practical measure, that a prohibition to import is one thing, "while a prohibition to sell without license is another and "entirely different. The first would operate on foreign com-"merce on the voyage; the latter affects only the internal "business of the state after the foreign importation is com-"pleted and on shore."—JUSTICE WOODBURY, 5 How., 619; License cases.

The contract of transportation from Dallas, Illinois, to Brighton, Iowa, was a contract of commerce between states, legitimate and obligatory upon the parties, subject to no restrictions, except such as may have been imposed by congress under its exclusive power granted in paragraph 3, Sec. 8, Art. I, of the national Constitution.

The power to impair the obligation of this contract did not inhere in the sovereignty of the State of Iowa, and the performance of the contract of carriage could not be obstructed by the operation of its laws.

It was held by this court, following many precedents, in the *Bowman* case, 125 U. S., that the power to regulate commerce is vested by the Constitution exclusively in Congress, that a state may not prohibit the importation into its territory of an article of commerce, and as a corollary to that doctrine it was held in the *Leisey* case, 135 U. S., that a state may not in the exercise of its own sovereignty prevent the

completion of the interstate commercial transaction, or frustrate its purpose by prohibiting the sale of the imported article in its original packages. But in the course of its decision, on page 123, the court used the following language: "But, notwithstanding it is not vested with supervising "power over matters of local jurisdiction, the responsibility "is upon Congress, so far as the regulation of interstate "commerce is concerned, to remove the restriction upon the "state in dealing with imported articles of trade within its "limits which have not been mingled with the common mass "of property therein. * * *" Page 124, "Under our "decision in *Bowman vs. Chicago Ry. Co.*, they had the right "to import this beer into that state (Iowa), and in the view "which we have expressed they had the right to sell it, by "which act alone it would become mingled in the common "mass of property within the state. Up to that time we hold "that in the absence of congressional permission to do so, the "state had no power to interfere by seizure or any other "action in prohibition of importation and sale by the foreign "or non-resident importer." Upon the announcement of this decision, appeal was promptly made to Congress for permissive legislation, and in August, 1890, the "original package bill" was passed. The "original package" was the source as well as the subject of this permissive legislation by Congress. The decision in the Bowman case was only a reaffirmation of the settled doctrine that that element of commerce between the states which consists in transportation is within the exclusive jurisdiction of Congress for its regulation; that contracts of transportation from one state into another state are not subject to state control or interference, and that the power to control or to regulate such contracts can not be delegated to the state by Congress, 125 U. S., 484, and *Hall vs. DeCuir*, 95 U. S., 485–8. To this extent that decision was accepted by the intelligent legal judgment of the country, but what had been urged as the resultant doctrine, namely, that the subject of the contract, the goods themselves, should not be subject to the operation of the police laws of the importing state until after sale within that

state, had always been in dispute, and denied by high authority, so that the decision in the Leisy case to that effect came as a surprise and disappointment, not only to those interested in the particular matter of temperance reform, but also to that large number of the people who believe that the police power is a real and necessary power with exclusive control in matters of local concern. We quote the words of the advocates of the Act of August 8, 1890, always named in the Record "The Original Package Bill," not only to set forth the situation, but to show what was supposed by senators and members of congress to be the intention of the bill.

"Not only must the property be consigned, but must be "once sold before interstate commerce ceases and commerce "within the state begins. *It is this addition which has made "the trouble*, and which was unexpected."—Congressional Record, 1890, p. 7427.

"The necessity for the legislation proposed by the pending "bill arises out of the decision of the Supreme Court of the "United States in the case of *Leisy vs. Hardin*. The Court "in that case held in substance that articles of commerce "transported from one state to another do not become a part "of the common mass of property within the state to which "they are transported, and subject to the laws of such state, "until they have been sold, or otherwise disposed of by the "importer. * * * that the right of the state by legisla-"tion to any way touch or affect property imported to it can "only be exercised after the importer has disposed of it in "some way, by sale or otherwise."

"The proposition of this bill is to draw the line between "government and state control over property thus imported "at the point where the property is transported into the par-"ticular state and there held or offered for sale, instead of at "the point where the property has been sold or disposed of "by the importer."—Congressional Record, pages 7489–90.

And this view of the purpose and scope of the Act proposed was not questioned in all the debates in either house, so far as we have been able to learn, by supporter or opposer. It was intended only to permit the subject matter of the con-

tract of carriage as an article of sale or exchange to become subject to the operation of the laws enacted in the exercise of the police power of a state immediately upon the performance of the contract of carriage, and not before.

The language of the Act of Congress does not permit interference with the act of transportation—much less the characterization and punishment of such act as crime. There was a single and definite intention, apt words were used to express it, and the words used cover and include all the intention. If it had been intended to subject the contract of transportation to the operation of the state laws, some provision like this would have been added: "And any contract "of transportation of such liquor into any state wherein the "traffic in liquor and transportation of liquor produced within "its territory is by its laws forbidden, shall be void."

The Act of Congress divests liquor transported from one state into another of its exemption as an article of interstate commerce from operation of the liquor laws of the state at a certain time, which time is pointed out and defined by the words "transported into" and "upon arrival in such state."

It needs no refinement of definition or nicety of analysis to perceive that "transported" is in the past tense and describes a completed act, and that "into" means not "to," but a point within the boundaries of the state. The state line must have been crossed before there has been transportation into; goods must have been brought not "to" but across the line before the local laws are permitted to affect them.

How far across? We think the answer reasonably obvious; "to the end of the carry." The contract of transportation is a unit, valid and obligatory (obligatory on the carrier to be entered into in the state where made, as well as in the state where its performance is to be finished).

Valid when made, it continues valid and obligatory into the state; if valid into the state for a rod, it is valid to the center of the state; if valid to Burlington, it is valid to Brighton station; if valid to Brighton it is not invalidated by stops at intervening stations. It is no less legal for those stops, and would have been no more legal had they not been

made. In short, if the contract is valid part way, it is valid the whole way; if the carrier may legally approach, he may legally reach his destination. If he may not be hindered or charged with crime for setting the liquor down within the state sixteen feet from its boundary, he may not be charged with crime for carrying it the last sixteen feet of its course from the car to the freight house.

It would have been as easy to say "upon arriving at" the boundary of the state, if Congress had intended such largeness of permission, but, intending to permit only what it might permit constitutionally, to permit all that was necessary and no more than was necessary to enable a state to carry out its local policy, Congress defined its permission by the use of the common and well-understood phrase, "upon arrival in." This marks the "period of time earlier" than that at which the imported goods became mingled with the general mass of property in the state. The word "arrival" does not apply to a stage in a journey, but to the end of a journey; it denotes a finishing of the course; it means the getting to shore.

The words, then, "upon arrival in" do not mean upon "arriving at" Iowa, which might, without further explanation, be interpreted at the border of Iowa, but arrival at some place in Iowa, and not at a vague, uncertain somewhere, but at a definite place—the place intended; to which the course had been directed, the end of the journey planned, the destination. This is the fair interpretation of the language deliberately used. And to make clear its intention, Congress indicates the evil to be remedied, the difficulty to be removed, and limits and sums up the permission granted in the words which close the act: "And shall not be exempt therefrom "by reason of being introduced in original packages, or "otherwise."

By this Act, Congress removed all impediment to the free action of the police power of the State that it might remove under the Constitution. It does not in terms, or by implication or inference, affect the contract of transportation, because that would be an attempt not only unconstitutional

but futile to give the police laws of a state force and effect beyond the border of the state. But the power of the State to protect itself, to enforce its own local policy in behalf of good morals is freed by this Act of Congress from the hindrance and obstruction inherent in free commerce between the states in the article of liquor, as it permits the police power to lay its hands on the thing transported immediately upon the performance of the contract of transportation. It thus grants to the State, so far as its control of liquor is concerned, all that was claimed for it in the opinion of a great political party, in the arguments of learned lawyers, and of wise dissenting judges, and even in the judgment of the supreme court in the case of *Pierce vs. New Hampshire*; but it grants and can legally grant no more. And even if the right to grant further freedom to the State in this behalf was beyond question, even if it did not involve the abdication of the exclusive authority intrusted to Congress by the constitution, and a denial of the duty imposed only on Congress by that instrument, such grant could not be urged as necessary, for while the State's police power may not forbid the transportation, it may prevent the sale which is the sole purpose of the transportation; while it may not forbid the contract, it may effectually prevent it by removing all motives for its undertaking.

If Congress has, by the Act of August 8, 1890, permitted the laws enacted in the exercise of the police power of the states to operate against the act of importation and the agents employed; if it has limited or transferred its constitutional power to prescribe or to declare what contracts of transportation between states shall be lawful for parties to enter into and to perform, it is plain that it has in effect, and as a practical consequence, delegated to the states power not only to regulate and forbid interstate commerce in liquor, but to obstruct and to limit, if not to destroy, all commerce between the states. If the State may prevent importation, it may adopt and enforce its own measures to prevent. It may halt the carrier at the boundary of the state and search his freight. If the State so wills, no train can pass the

border line until its goods are approved and permission to proceed is granted by the searching officer. Clean hands are not needed to set the machinery of police laws in motion. At the will of any one competent to file an information, whether he be responsible or not, whether a citizen of supposed public spirit or a meddler and informer, whether moved by zeal for pure morals or hate of a railroad company, the cars of the carrier must be overhauled and the general business of the state and of other states delayed and injured. No reason can be suggested why the carriage of liquor shipped in Boston for San Francisco across the state of Iowa may not be prevented, and the attempt of the carrier to transport it punished as crime. The same moral sense which convicted this plaintiff would not quietly suffer the soil of Iowa to be used as a highway for the advance of this moral enemy upon its western neighbors. Such construction of this Act of Congress makes it a source of discord between states, of danger and disaster to the business of the country, and a measure of constant tyranny and menace to the carriers of commerce among states. It becomes truly not a delegation of power to regulate commerce; but rather a license to harass and hinder commerce, to sink rocks in the entrance to harbors, and to set snags in the channel of the Mississippi. The serious disturbance of business interests, the grave conflicts of state jurisdiction and state policy, the obstruction of commercial intercourse foreseen by the framers of the Constitution, and the avoidance of which led most persuasively to its ordaining and establishment, would be aggravated and intensified if each state might prescribe its terms and conditions for the importation of any commodity of commerce, whether it be liquor or whether it be corn.

"In view of the commercial anarchy and confusion that "would result from the diverse exertions of power by "the several states of the Union, it can not be supposed that "the Constitution or Congress has intended to limit the free-"dom of commercial intercourse among the people of the "several states." *Bowman* case, 125 U. S., 494.

Nothing in the language of this Court in the cases cited

justifies the assumption of the courts of Iowa that the grant of permission by Congress for the state law to operate upon the thing imported, permitted its interference with the act of importation.

"Whenever the law of the state amounts essentially to a "regulation of commerce with foreign nations or among the "states, as it does when it inhibits indirectly the receipt of "an imported commodity, *or its disposition before it has "ceased to become an article of trade between one state and "another*, it comes in conflict with a power which in this "particular has been exclusively vested in the general govern- "ment and is therefore void." *Leisy vs. Hardin*, 135 U. S., 123.

"Congress has not attempted to delegate the power to "regulate commerce * * *, it has taken its own course and "made its own regulation applying to those subjects of inter- "state commerce one common rule, whose uniformity is not "affected by variations in state laws affecting such property.

"The power over interstate commerce is too vital to the "integrity of the nation to be qualified by any refinement of "reasoning, the power to regulate is solely in the general "government, and it is an essential part of that regulation "to prescribe the regular means for accomplishing the intro- "duction and incorporation of articles into and with the mass "of property in the country or state." (12 Wheat., 448.) "No reason is preceived why, if Congress choses to provide "that certain designated subjects of interstate commerce shall "be governed by a rule which divests them of that character "at an earlier period of time than would otherwise be the "case, it is not within its competency to do so." *In re Rahrer*, 140 U. S., 562; and page 564: "Congress did not "use terms of permission to the state to act, but simply "removed an impediment to the enforcement of the state "laws in respect to imported packages in their original con- "dition, created by an absence of specific utterance on its "part. *It imparted no power to the state not then possessed*, "but allowed imported property to fall at once upon arrival "within the local jurisdiction."

"It is enough to say that the power to regulate or forbid "the sale of a commodity after it has been brought into a "state does not carry with it the right and power to prevent "its introduction by transportation from another state." *Bowman* case, 125 U. S., 500.

The existence of two elements in commerce and the distinction between them is constantly kept in view. It is not held that the transportation of liquor is no longer an act of commerce, or that the regulation of its transportation from one state into another is not still a regulation of commerce. Only because it was a subject of interstate commerce was permission of Congress required for the operation upon it of the police power of the State. And only upon the subject of commerce was this permission granted.

So long as it could be sold and mingled with the mass of property within the state, the policy of moral reform in certain states was thwarted and the laws to that end nullified. It was found necessary to forbid the sale, and Congress thought it wise to permit the prohibition of the sale. So much was needed and no more, and so much and no more was granted.

As the habitable territory of this country is enlarged, as new states are added and population multiplies, the interests of the people grow more numerous and diverse and powerful, and with them spring up rivalries and prejudices; there must be local policies and local jealousies. It must needs be that offences come. In this case the zeal with which the enforcers of the local policy of Iowa laid hands not upon the obnoxious article of commerce but upon the carrier, the confidence with which the courts of Iowa assumed that the power of the general government had been postponed in this matter of general concern to the power of the State, shows there is no danger that the spirit of Americanism will too widely or too strongly, or too soon prevail; that there will be too general or too intense conscious loyalty to the national government. It is still needful that the people should upon every proper occasion be reminded of their citizenship, that they should be brought to realize the omnipres-

ence throughout its vast territory of the national authority, and should gain an abiding sense of the beneficent influence of its constant control in their political and commercial relations.

The plea of the plaintiff in error is that his act was in the course of business between the states of Illinois and Iowa, and was in its legal character an act exclusively of national concern; that the state legislature had no jurisdiction to give his act the character of crime, or the state court jurisdiction to condemn him. And he prays that its judgment be set aside.

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J. W. BLYTHE,
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